

To: Balla, Richard[Balla.Richard@epa.gov]
Cc: LaPosta, Dore[LaPosta.Dore@epa.gov]; Kraft, Nicole[Kraft.Nicole@epa.gov]; McKenna, Douglas[McKenna.Douglas@epa.gov]; Pabst, Douglas[Pabst.Douglas@epa.gov]; Evangelista, Pat[Evangelista.Pat@epa.gov]; Simon, Paul[Simon.Paul@epa.gov]; Gratz, Jeff[Gratz.Jeff@epa.gov]; Mears, Mary[Mears.Mary@epa.gov]; McGowan, Michael[McGowan.Michael@epa.gov]
From: Enck, Judith
Sent: Fri 6/3/2016 9:27:02 PM
Subject: RE: Judith: CWD response to your questions re News Clips (Guardian) item on lead and copper sampling

I still have concerns. Can you make sure the file reviews include the communities that were identified as possibly sampling the wrong way? If we determine they sampled the wrong way, we need to contact them and tell them to sample the right way asap.

From: Balla, Richard
Sent: Friday, June 03, 2016 5:01 PM
To: Enck, Judith <Enck.Judith@epa.gov>
Cc: LaPosta, Dore <LaPosta.Dore@epa.gov>; Kraft, Nicole <Kraft.Nicole@epa.gov>; McKenna, Douglas <McKenna.Douglas@epa.gov>; Pabst, Douglas <Pabst.Douglas@epa.gov>; Evangelista, Pat <Evangelista.Pat@epa.gov>; Simon, Paul <Simon.Paul@epa.gov>; Gratz, Jeff <Gratz.Jeff@epa.gov>; Mears, Mary <Mears.Mary@epa.gov>; McGowan, Michael <McGowan.Michael@epa.gov>
Subject: Judith: CWD response to your questions re News Clips (Guardian) item on lead and copper sampling

Hi Judith,

We've reached out to NYSDOH and NJDEP to make sure they have distributed the attached February 2016 memo to the drinking water systems/operators and to get additional information on the systems identified in the article. We will provide you with a more detailed response next week. We're not surprised that drinking water system operators and the public need clarification on how to sample, this became clear in the aftermath of Flint, which is why HQ sent out the attached February 2016 memo. It's too early to tell if this is serious or widespread in Region 2. We will know further after the next set of lead and copper sampling data is available in SDWIS in July 2016. Our comprehensive file reviews of the drinking water systems is still underway and will be completed this summer, and where necessary, operators are or will be taking corrective actions. You asked if we should require additional testing, we do not see this as necessary as we will be getting additional data in July 2016. The public is very engaged in drinking water issues and we have received numerous questions about how to properly sample. The July 2016 SDWIS data should be based on the correct sampling technique reaffirmed in the February 2016 memo (i.e., don't remove the aerator and no flushing before sampling, and the new requirement to use wide mouth sampling bottles) and will give us an indication of any drinking water systems that require further investigation. In response to press inquiries specific to Buffalo, we provided the following language to PAD and HQ:

On February 29, 2016 EPA issued a clarification (to the October 29, 2006 guidance) memo on tap water sampling procedures for purposes of the lead and copper rule (attached). The memo was distributed to NY, NJ, PR, and USVI upon release. The memo (including the 2006 memo) was also distributed to Association of State Drinking Water Administrators (ASDWA) and the American Water Works Association (AWWA) who distributed it to their members (which includes local health departments and public water system operators). Based on information provided to us by Erie County, Buffalo Water Authority has no recollection of receiving the 2006 memo. As indicated in the article, they have now revised their sampling procedures accordingly. EPA Region 2 is in the process of conducting comprehensive file reviews in New York State to determine compliance with the lead and copper rule. Sampling procedures, among other things, are evaluated as part of the file review. The systems identified in the article will be reviewed as part of our ongoing file reviews. We're also following up with the New York State Department of Health and New Jersey Department of Environmental Protection in response to the article.

Thanks to Doug and his crew for their input on this response.

-rick

Rick Balla, Acting Deputy Director, Clean Water Division

From: Enck, Judith

Sent: Friday, June 03, 2016 11:23 AM

To: LaPosta, Dore <LaPosta.Dore@epa.gov>; Kraft, Nicole <Kraft.Nicole@epa.gov>; McKenna, Douglas <McKenna.Douglas@epa.gov>; Pabst, Douglas <Pabst.Douglas@epa.gov>; Evangelista, Pat <Evangelista.Pat@epa.gov>; Simon, Paul <Simon.Paul@epa.gov>; Balla, Richard <Balla.Richard@epa.gov>

Subject: FW: News Clips

See the communities in region 2 noted in these drinking water articles. Please give me a sense of how serious this is in each region 2 community. Should we require follow up testing? judith

From: Rodriguez, Elias **On Behalf Of** Region2 PAD News

Sent: Friday, June 03, 2016 10:49 AM

To: R2 EPA Region 2 (EPA Staff) <R2_EPA_Region_2_EPA_Staff@epa.gov>

Subject: News Clips

The Guardian UK

At least 33 US cities used water testing 'cheats' over lead concerns

Exclusive: Guardian investigation reveals testing regimes similar to that of Flint were in place in major cities including Chicago, Boston and Philadelphia

Of the 43 large cities that provided water testing information to the Guardian for this investigation, 33 used distortions in their testing in the past decade. Photograph: Richard Drew/AP

Oliver Milman and Jessica Glenza

2 June 2016

At least 33 cities across 17 US states have used water testing “cheats” that potentially conceal dangerous levels of lead, a Guardian investigation launched in the wake of the toxic water crisis in Flint, Michigan, has found.

Of these cities, 21 used the same water testing methods that prompted criminal charges against three government employees in Flint over their role in one of the worst public health disasters in US history.

The crisis that gripped Flint is an extreme case where a cost-cutting decision to divert the city’s water supply to a polluted river was compounded by a poor testing regime and delays by environmental officials to respond to the health emergency.

The Guardian’s investigation demonstrates that similar testing regimes were in place in cities including Chicago, Boston, Philadelphia, Detroit and Milwaukee.

On Thursday, the Hagens Berman law firm filed a class action lawsuit against the city of Philadelphia, alleging that water department testing protocols “temporarily hide” lead contamination and that the city does not test enough high-risk homes.

The Guardian investigation concerned thousands of documents detailing water testing practices over the past decade. They reveal:

- Despite warnings of regulators and experts, water departments in at least 33 cities used testing methods over the past decade that could underestimate lead found in drinking water.
- Officials in two major cities – Philadelphia and Chicago – asked employees to test water safety in their own homes.
- Two states – Michigan and New Hampshire – advised water departments to give themselves extra time to complete tests so that if lead contamination exceeded federal limits, officials could re-sample and remove results with high lead levels.
- Some cities denied knowledge of the locations of lead pipes, failed to sample the required number of homes

with lead plumbing or refused to release lead pipe maps, claiming it was a security risk.

33 US cities violated EPA guidelines

The Guardian contacted 81 of the most populous cities and towns east of the Mississippi River, and asked how they test drinking water for lead.

A review of documents found that in the last decade, 33 city and town water departments and two states used testing methods that defied recent US Environmental Protection Agency guidance. These methods may lower the amount of lead detected in water in households.

- In 21 cities, testers were instructed to 'pre-flush' water pipes before testing for lead content, against EPA guidance
- In 7 cities, testers removed aerators from spouts before running water, which can reduce lead content
- In 23 cities, testers were told to run water slowly, which causes less lead to be dislodged from pipes

New England

Boston, MA

Worcester, MA

Springfield, MA

Bridgeport, CT

Portland, ME

Lewiston, ME

Bangor, ME

South Burlington, VT

Mid-Atlantic

Philadelphia, PA

Buffalo, NY

Jersey City, NJ

Albany, NY

Croton-on-Hudson, NY

Midwest

Chicago, IL

Detroit, MI

Columbus, OH

Milwaukee, WI

Grand Rapids, MI

Aurora, IL

Rockford, IL

Warren, MI

Galesburg, IL

Sebring, OH

South

Miami, FL

Tampa, FL

Greensboro, NC

St. Petersburg, FL

Augusta, GA

Jackson, MS

Charleston, SC

Mount Pleasant, SC

Bowling Green, KY

Southaven, MS

Data obtained by the Guardian via FOI requests. Graphic: Rich Harris/Jan Diehm/The Guardian

The disaster in Flint, sparked when authorities failed to treat drinking water for lead, prompted criminal charges against three government employees: Mike Glasgow, Stephen Busch and Mike Prysby.

Marc Edwards, the scientist who first uncovered the crisis in Flint, described water testing in some of America's largest cities as an "outrage".

"They make lead in water low when collecting samples for EPA compliance, even as it poisons kids who drink the water," Edwards, a Virginia Tech scientist, said. "Clearly, the cheating and lax enforcement are needlessly harming children all over the United States.

"If they cannot be trusted to protect little kids from lead in drinking water, what on Earth can they be trusted with? Who amongst us is safe?"

For 25 years, the Environmental Protection Agency has required water utilities to test a small pool of households for lead contamination at least every three years. Typically, city water departments ask residents to collect these water samples. But the way residents are instructed to sample their water, as well as which households are chosen for testing, can profoundly impact how much lead is detected.

Testing methods that can avoid detecting lead include asking testers to run faucets before the test period, known as "pre-flushing"; to remove faucet filters called "aerators"; and to slowly fill sample bottles. The EPA reiterated in February that these lead-reducing methods go against its guidelines, and the Flint charges show they may now be criminal acts.

The arrest warrant for Glasgow, Busch and Prysby states that the men "did improperly manipulate the collection of water samples by directing residents to 'pre-flush' their taps by running the water for five minutes the night before drawing a water sample and/or did fail to collect required sampled included in the tier 1 category of service lines."

The tactic of pre-flushing, which helps clear lead from home plumbing prior to a test, is rampant across many large cities. In their most recent test cycles, Philadelphia; Milwaukee, Wisconsin; and Buffalo, New York, tested water for lead in this way.

The EPA has warned since 2008 that pre-flushing is problematic and goes against the "intent" of regulations designed to detect lead. Nevertheless, the federal agency failed to properly police state agencies who included the method in sample instructions for years, including at the Maine and Rhode Island departments of health.

Further distortion is achieved through the removal of "aerators" – the small metal filters at the tip of faucets. These filters can collect lead particles and add to lead detected in tests. The EPA has warned against this practice since 2006, when it became clear that a lead poisoning case in Durham, North Carolina, was missed by the water department at least partly because it routinely removed the filters.

Philadelphia, a city accused of having the worst water testing in the US, asks testers to pre-flush their pipes, remove aerators and slowly pour water into a sample bottle. The EPA has warned against all these testing methods, which could "mask the added contribution of lead at the tap".

Documents show some authorities have also removed high-risk homes from testing or sought to obscure their dangerous lead levels. In Michigan, a department of environmental quality (MDEQ) official told the director of a town water department in a Detroit suburb called Howell to "bump this one out", referring to a sample with high lead levels, by taking additional samples.

"I would suggest at least five more samples," Adam Rosenthal, an official at the MDEQ drinking water office wrote in an email in 2008.

New Hampshire offered similar advice to water system officials in that state, advising water departments to test early so any high results could be re-tested.

"If your water system samples early in their compliance period, then time remains for you to collect a second set of samples," reads advice from New Hampshire's department of environmental services to local water systems. "This may

result in a 90th percentile below action levels.”

PHOTO A handyman explains the new water filter to Mary Stewart and Terrence Tyler at their residence in Flint, Michigan. Photograph: Sarah Rice/Getty Images

Water departments to change lead-testing methods after investigation

Thousands of Flint’s children are expected to suffer developmental problems as a result of the lead contamination. Hundreds of thousands of bottles of water have been distributed to the city by the national guard, deployed in January. Barack Obama called Flint’s lead contamination a “man-made disaster” and a symptom of urban neglect suffered by poor, largely black communities across the US.

Since the crisis in Flint prompted a federal state of emergency, the city, state and its new water supplier, Detroit, phased out water testing distortions. But other cities have failed to do so – against the advice of EPA guidelines..

In the nine years since the EPA last updated lead regulations, a substantial body of peer-reviewed science has shown no level of lead is safe for humans. Tiny amounts are associated with impaired development and behavioral problems in children, and exposure is linked to a propensity to commit violent crimes.

Also in that time, peer-reviewed studies by EPA scientists and academics showed how testing methods that flout guidelines miss lead contamination. Some of these studies even stemmed from previous lead contamination crises, such as in Washington DC in 2001.

“What on earth can you do when the environmental policemen at EPA have condoned open cheating on the water lead rule for more than a decade now?” said Edwards, the author of several studies.

In a statement, the EPA did not respond to the widespread testing distortions but said it is currently working on “long-term revisions” to its lead and copper rule, expected in 2017.

“During our review, EPA has been evaluating critical issues related to increasing public health protections under the rule while maintaining an approach that can be feasibly implemented by the states and drinking water utilities,” the regulator said.

“As we develop the proposed revisions to the rule, we are also focusing on enhanced oversight of the states, including implementation of the existing rule. In EPA’s recent letter to the states, we make clear that approaches are not to include aerator removal or allow pre-stagnation flushing prior to collection of samples by residents.”

The crisis in water testing could be even more widespread than evidence unearthed by the Guardian shows. Several large cities sell water onto almost 400 adjacent cities and towns. Many of these locations also test their own water as part of EPA recommendations.

As part of its investigation in the wake of the Flint disaster, the Guardian sought water testing documents from 81 of the largest cities in states east of the Mississippi River. Eastern states are considered to have a high risk of lead contamination due to their aging infrastructure. Forty-three cities provided information, and 33 of these used distortions in their water testing in the past decade.

Several cities do correctly follow EPA guidelines on testing, according to documents provided to the Guardian, including: Cincinnati, Ohio; Jacksonville, Florida; Louisville, Kentucky; and Mobile, Alabama. Several said they intend to change protocols when they next test, including Mount Pleasant, South Carolina; Buffalo, New York; Worcester and Boston, Massachusetts; Lewiston, Maine; and the Rhode Island and Maine health departments. Chicago stopped aerator removal and pre-flushing by 2012.

In response to the Guardian’s investigation, many water departments said the EPA had not issued clear guidance on the issue in the past. Some said they had never received a previous EPA memo regarding testing protocols, or that the practices are not illegal.

Mahita Gajanan contributed to this report.

The Guardian UK

Water departments to change lead-testing methods after investigation

Instructions provided varied greatly, ranging from those that contained protocols the EPA advised against a decade ago to those that were periodically updated

At least 33 US cities used water testing ‘cheats’ over lead concerns

The Guardian requested water testing records from more than 80 of the most populous cities east of the Mississippi,

which have some of the oldest homes in the US. Photograph: Kelly Lafferty Gerber/AP

Jessica Glenza and Oliver Milman

Thursday 2 June 2016 09.49 EDT

Water departments that use controversial lead-testing practices have told the Guardian they will change their methods after an investigation revealed they were not following environmental guidelines.

Most of the water departments involved said they used the testing methods because state governments told them to, federal guidance was not clear, or they had not received any word that practices may underestimate lead content.

The investigation into lead testing methods comes after the lead contamination crisis in Flint, Michigan, where indictments against three government officials referenced water testing methods as part of an alleged coverup.

Chicago residents take action to be rid of lead pipes as fear of toxic water grows

The Guardian requested records from more than 80 of the most populous cities east of the Mississippi river, which have some of the oldest homes in the country. Forty-three cities provided documents to the Guardian, and 33 were found to have used methods the Environmental Protection Agency (EPA) advised against earlier this year.

The Guardian requested comment from all of the water departments in its reporting and received numerous responses.

“The last time we were required to perform testing for the lead and copper rule was in 2014,” said David Jones, director of the Lewiston, Maine, department of public works. “Since then, the EPA and state have changed their recommended procedures.”

Lewiston asked residents to remove and clean aerators and flush water out of plumbing before a six-hour federally mandated test period in its latest testing. The EPA recommended against aerator removal in 2006 because it can diminish lead detected in tests, a recommendation that didn’t make it to Lewiston but one that was acknowledged by the water department in Bangor, Maine.

“We had not told our customers to remove the aerators or clean them – that was not included in our sampling instructions,” said Kathy Moriarty, Bangor water district general manager.

“I guess we really didn’t feel like we were instructing our customers in any way that would be incorrect, and the [state] drinking water program had established recommended procedures for collections of procedures, and those recommendations did provide a pre-stagnation flush,” she said.

Officials in other cities said that they used testing methods warned against, but that the methods are “used throughout the drinking water industry” and not explicitly illegal.

“To make apples-to-oranges comparisons between Aurora, Illinois, and Flint, Michigan, would be not only factually incorrect, but irresponsible as well,” said Dan Ferrelli, a spokesman for the city of Aurora.

“We understand that this type of ‘pre-stagnation flushing’ has been used throughout the drinking water industry for lead/copper compliance sampling for many years,” he said. “We are not Flint, Michigan.”

In Augusta, Georgia, the water department advised residents to “gently” open taps to fill sample bottles. The EPA recommended against this practice in February. Officials there said they would maintain the practice, however, until the state told them to change it.

“As explained, the Augusta utilities department does NOT provide any other instructions to samplers in addition to the instructions that are received from the [Georgia environmental protection division],” said Kayla Cooper, a city attorney.

Instructions provided by water companies varied greatly, ranging from those that contained protocols the EPA advised against a decade ago to those that were periodically updated, such as in Chicago.

Philadelphia, for example, continued to ask samplers to remove aerators even in recent tests. The city declined to answer questions and said the newspaper’s reports “on this issue have contained numerous factual inaccuracies across several articles”. The city said that “most inaccuracies were never addressed” and that “we no longer feel comfortable assisting your reporting”.

Tests on Flint water targeted homes far from network of lead pipes

The water department, in its most recent email, did not specify what inaccuracies the Guardian failed to address but provided a fact sheet developed after one of the newspaper’s first stories on Philadelphia.

That fact sheet said that the department asks residents to flush lines before a six-hour test period but doesn’t ask them to flush lines before filling sample bottles, something it felt the Guardian did not effectively explain in a January story. The water department also said federal compliance testing is only a “small fraction” of overall lead testing, that it

“educates customers in high-risk areas” about ways to reduce lead exposure.

“While testing is a requirement, our primary motivation in all testing is not to meet regulations, but to ensure that we are providing safe, affordable drinking water for the 1.61 million people who depend on Philadelphia Water every day,” the department said in a fact sheet.

“Flint is unfortunate,” said Barry Parsons, the water supply manager in Greensboro, North Carolina. There, instructions told residents to “slowly” open taps, a practice the EPA recently warned against and which Parsons said his department stopped. “But it’s actually causing the nation’s water systems to look at their systems, so that’s a positive thing I think, not a negative thing.”

“The way we look at it, human health is most important to us, so whatever we can do – that’s our motto here, one or one million.”

WRGZ

REPORT: WATER TESTING VIOLATED EPA GUIDELINES

JUNE 02, 2016

AN INTERNATIONAL MEDIA OUTLET REPORTED THURSDAY THAT WATER DEPARTMENTS IN 33 U.S. CITIES, INCLUDING BUFFALO, VIOLATED EPA RECOMMENDATIONS FOR LEAD TESTING OVER THE PAST DECADE, WHICH COULD HAVE POSSIBLY ALTERED RESULTS.

THE GUARDIAN'S INVESTIGATION, PROMPTED BY THE CRISIS IN FLINT, MICH., REVEALED THAT DEPARTMENTS FAILED TO ABIDE BY MULTIPLE BEST PRACTICE STANDARDS. IN BUFFALO, FOR EXAMPLE, THE PUBLICATION FOUND THAT RESIDENTS WERE USING "PRE-FLUSHING" TECHNIQUES DURING TESTS FOR LEAD LEVELS, WHICH MEANS THEY WOULD HAVE FLUSHED THE WATER THE NIGHT BEFORE TESTING.

BUT OLUWOLE MCFOY, THE CHAIRMAN OF THE BUFFALO WATER BOARD, CLAIMS THE AGENCY IS NOW IN COMPLIANCE WITH ALL BEST PRACTICES, FOLLOWING CORRESPONDENCE WITH THE EPA EARLIER THIS YEAR. 2 ON YOUR SIDE RECEIVED DOCUMENTS LATE THURSDAY FROM THE AGENCY -- UPDATED IN APRIL 2016 -- REFLECTING THE NEW POLICIES.

BUFFALO WATER TESTS FOR LEAD EVERY THREE YEARS, WITH THE MOST RECENT TESTS OCCURRING IN 2014. ALTHOUGH THE AGENCY IS NOT REQUIRED TO TEST AGAIN UNTIL 2017, IT WILL BEGIN A NEW ROUND OF TESTING IN 2016 IN RESPONSE TO SOME OF THE HEIGHTENED ATTENTION FROM FLINT.

"THE INFORMATION WE PROVIDED THE GUARDIAN IS WHAT WE USED FOR PREVIOUS TESTING IN 2014," MCFOY SAID. "AND HERE WE ARE, IN 2016, WITH NEW, UPDATED STANDARD OPERATING PROCEDURES, BASED ON WHAT THE EPA PUT OUT. AND WE'RE READY TO GO."

DAN TELVOCK, A REPORTER WITH OUR INVESTIGATIVE POST PARTNERS WHO COVERS ENVIRONMENTAL ISSUES EXTENSIVELY, SAID THE PREVIOUS TESTING PROCEDURES COULD HAVE HAD A NOTABLE IMPACT.

"THE RESULT COULD BE A SKEWED TEST AT THE TAP," TELVOCK SAID. "AND A FALSE SENSE OF SECURITY TO THE PERSON THAT LIVES THERE."

ALTHOUGH DOCUMENTS CITED BY THE GUARDIAN SHOW THE EPA HAD ISSUED RECOMMENDATIONS AS EARLY AS 2006, MCFOY QUESTIONS HOW 33 CITIES ACROSS THE COUNTRY COULD HAVE ALL MISSED THEM.

"THAT MEANS WE DIDN'T GET IT. I MEAN, THAT'S SUCH A HIGH NUMBER FOR ALL THESE MUNICIPALITIES NOT TO BE PERFORMING," MCFOY SAID. "IT'S CLEARLY NOT THAT WE'RE TRYING TO CHEAT ANY SYSTEM. WE WANT WHAT'S BEST FOR OUR PUBLIC-- I MEAN, OUR JOB IS PUBLIC HEALTH."

JUNE 3, 2016, 12:31 AM

Lead testing reveals elevated levels at several fountains in Cliffside Park schools

BY KRISTEN AGNES

CLIFFSIDE PARK CITIZEN

The Cliffside Park School District received the results of preliminary water tests performed to check the levels of lead in

all schools' drinking water last week.

The results, received May 23, revealed that while no drinking fountains or food preparation areas in School 3 or School 4 had lead samples above 15 parts per billion, the action level set by the Environmental Protection Agency, there are areas of concern in other schools.

In School 6, one basement water fountain and classroom water fountain contained elevated levels of lead. The fountain in classroom 116 has a level of 34 parts per billion, while the basement water fountain is slightly higher with 58.3 parts per billion.

The only other water fountain in the district with elevated lead levels is located in School 5. The sink on the first floor by the main office has a slightly elevated level of 16.2 parts per billion.

All other areas of concern involve bathroom and classroom sinks.

Superintendent Michael Romagnino explained that even though these are just the preliminary results, the district has taken action to ensure students and staff members are safe.

"We have shut down all of the fountains and sinks that are in question and once the final results are in I will meet with my maintenance staff and the water testing company to develop an action plan. The action plan will be posted to the website," said Romagnino in an email message.

He did not say when additional testing would be completed.

The school district decided to conduct these tests at the end of April after recent reports of contaminants discovered in several other New Jersey schools.

Nearby districts, including Newark, Paterson, Leonia, Emerson and Demarest, have all found elevated levels of lead in their drinking fountains.

New Jersey schools are not currently mandated by the state to test water for lead but, after recent reports of high levels of lead found in many schools across the state and the country, more local districts have begun testing for the metal.

High levels of lead in drinking water can cause many health issues, especially in young children. According to the United States Environmental Protection Agency, lead poisoning can cause cognitive issues including slow growth, learning and behavioral issues, lower intelligence and hearing problems.

Kathryn Coulibaly, the associate director of public relations for the New Jersey Education Association, explained that there is pending legislation regarding lead testing in New Jersey schools.

"Senate President [Stephen] Sweeney and other legislators have sponsored a bill that would mandate that all schools immediately test for lead in their drinking water and disclose the results. Currently, New Jersey public schools are not required by law to test, although many districts do so," said Coulibaly in an email.

"NJEA has long advocated for funding and guidance for districts on water testing," she added.

Opinion

The Army Corps of Abuse: The Supremes rebuke another misuse of the Clean Water Act

June 1, 2016 7:04 p.m. ET

Wall St. Journal

The Supreme Court is divided 4-4 on many issues, but the good news is that all eight Justices can still agree that Americans deserve their day in court to challenge intrusive government. That's the essence of Tuesday's unanimous ruling that the Obama Administration's expansive interpretation of the Clean Water Act can be challenged in court.

In February 2012, the Army Corps of Engineers told the Hawkes peat-mining company that marshy land it owns in Minnesota had a "significant nexus" to the Red River 120 miles away and thus could be regulated under the Clean Water Act. Hawkes tried to challenge this determination in federal court. But the Corps said the company couldn't do so until it had finished the Corps's permitting process, which the Corps said would be very expensive and take years (*U.S. Army Corps of Engineers v. Hawkes*).

This amounts to a pre-emptive veto of private land use. The Army Corps said the company must wait to challenge the Corps' decision. But if Hawkes develops the land on the assumption it would win its challenge many years hence, the company runs the risk of major penalties if it loses in the end. Heads the Army Corps wins; tails Hawkes loses.

Chief Justice John Roberts wrote for the Court that Hawkes shouldn't have to wait for the government to "drop the

hammer’ in order to have their day in court.” He added that “parties need not await enforcement proceedings before challenging final agency action, where such proceedings carry the risk of ‘serious criminal and civil penalties.’”

In a concurrence joined by Justices Clarence Thomas and Samuel Alito, Justice Anthony Kennedy raised intriguing hints that parts of the Clean Water Act may be unconstitutional. He said the law is “notoriously unclear” and “the consequences to landowners even for inadvertent violations can be crushing.” The law “continues to raise troubling questions regarding the Government’s power to cast doubt on the full use and enjoyment of private property throughout the Nation,” he wrote.

Justice Kennedy is right, especially as the Army Corps has used the “waters of the United States” designation to claim jurisdiction over nearly every corner of the country. The courts should step up their scrutiny of what has become one of the most abused federal laws.

Editorial

NYT

Why Are They Still Selling Cars With Killer Airbags?

By THE EDITORIAL BOARD

JUNE 3, 2016

Photo Deployed Takata airbags in a 2007 Dodge Charger. Credit Rebecca Cook/Reuters

Some 100 million vehicles with defective Takata airbags have been recalled around the world, about 60 million of them in the United States, which make it the largest auto recall in history. On Thursday, several companies, including General Motors and Ford, recalled an additional four million cars with those airbags, which have been linked to at least 13 deaths worldwide and more than 100 injuries.

Yet even now, four automakers — Fiat Chrysler, Toyota, Volkswagen and Mitsubishi — are selling new cars that contain the faulty airbags, according to a new report by the Democrats on the Senate Commerce Committee. And Fiat Chrysler and Toyota have refused to disclose which of their models contain the devices.

This is completely unacceptable. At the very least, consumers need to be warned that their new cars will eventually have to be recalled for repairs, which is a huge inconvenience.

These faulty devices are still in use because Takata, which had about 22 percent of the airbag market last year, and other manufacturers are struggling to produce enough of the devices that inflate airbags to meet demand for both the recall and new cars.

The automakers and the National Highway Traffic Safety Administration have said the airbags in new cars are safe, because only inflators that have been exposed to moisture and abrupt temperature changes over a period of years could cause bags to explode and send metal shrapnel flying into car cabins. (Airbags in older cars and those in more humid regions pose the greatest risk for such eruptions.) The faulty bags placed in new cars will be recalled by the end of 2018, according to the safety administration.

Some lawmakers, like Senator Bill Nelson, Democrat of Florida and the ranking member of the Commerce Committee, say that the safety agency should ban the sale of new cars with defective airbags. It is unclear whether the agency has the legal authority to do so. But it could demand that car companies inform consumers about which new cars have the risky airbag inflators, so they can avoid buying one with a known defect. This is also important because it can be very hard for manufacturers to reach owners of defective vehicles years later, especially when the cars have been resold.

In the Takata case, for example, just 8.4 million affected cars had been repaired as of May 20. The earliest recall was in 2008, though most of the cars have been recalled since May 2015. Last year, the secretary of transportation, Anthony Foxx, said an estimated 20 percent of recalled cars are never repaired, and perhaps more.

It’s a bizarre situation when a faulty device is knowingly put into new cars. This can’t give consumers much confidence in this industry or its regulator.

madisoncountycourier.

EPA Grant to Syracuse University

June 3, 2016

Project Educates Local Teachers and Students About the Traditions and Future of the Onondaga Lake Watershed

The U.S. Environmental Protection Agency awarded a \$91,000 environmental education grant to Syracuse University for an education outreach project focused on Onondaga Lake. The project will include both traditional customs in partnership with the Onondaga Nation and science to educate Central New York teachers about species and landscapes native to the Onondaga Lake watershed.

“Syracuse University is combining traditional Native American customs and scientific advancement in a unique way,” said Judith A. Enck, EPA Regional Administrator. “The teachers involved in this project will educate hundreds of local Syracuse students about the past, present and future of the Onondaga Lake watershed.”

Through this project, Syracuse University is developing educational materials and tools that allow students of various ages to explore and learn about the watershed. Weaved into the curriculum materials is the Haudenosaunee Thanksgiving Address, which is an expression of Haudenosaunee perspectives. As part of the grant project, a summer workshop will be held for Central New York teachers.

Syracuse University was one of three recipients to receive the 2015 round of environmental education grants from EPA Region 2, which is responsible for New York, New Jersey, Puerto Rico, the U.S. Virgin Islands and eight Indian Nations. A total of \$222,000 was awarded in EPA Region 2 for the three grants and funding nationwide for this round of grants totaled more than \$3.3 million. Nationally, EPA funded 35 grants from organizations in 26 states for the 2015 Environmental Education Grants.

Since 1992, EPA has distributed approximately \$68 million supporting more than 3,600 projects. This competitive grants program supports environmental education projects that increase public awareness about environmental issues and provide participants with the skills to take responsible actions to protect the environment.

For more information on the new awardees and on how to apply for future environmental education grant competitions, please visit <http://www2.epa.gov/education/environmental-education-ee-grants>.

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